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OFFICE OF PETITIONS

In re Application of
Larkin Hill Lowrey et al.
Application No. 10/614,665
Filed: July 7, 2003
Attorney Docket No. 0308816.0156

DECISION ON PETITION
UNDER § 1.183

This is a decision in response to the petition filed July 28, 2008, under 37 CFR § 1.183 for waiver of the requirement under 37 CFR § 1.131 that all of the inventors sign the declaration of prior inventorship.

The petition under 37 CFR 1.183 is **GRANTED**.

The above-identified application was filed on January 4, 2005, with a 37 CFR 1.63 declaration signed by all of the inventors. With the instant petition, applicants filed a 37 CFR § 1.131 declaration. The 37 CFR § 1.131 declaration was executed by all the joint inventors except Chuck Myers. Applicants have filed the instant petition to have the 37 CFR § 1.131 declaration accepted as signed by all inventors on their own behalf and on behalf of non-signing inventor Chuck Myers.

37 CFR 1.131 states, in pertinent part:

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In

application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR § 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR § 1.183 to be granted to waive this requirement that joint inventor Myers sign the 37 CFR § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

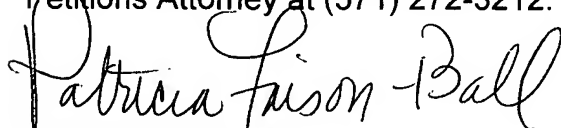
On instant petition, applicants have set forth the steps taken to obtain joint inventor Myers' signature on the 37 CFR § 1.131 declaration. Applicants have shown that a bona fide effort was made to reach or locate inventor Sadegh to present the 37 CFR § 1.131 declaration and supporting documentation. The declaration presented is signed by the remaining joint inventors. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation, warranting waiver of the rules.

Petitioner's deposit account no. 11-1110 has been charged for the RCE, the extension of time and the petition under 37 CFR 1.1183.

The petition is granted to the extent that the 37 CFR § 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied. This is not a decision on the merits of the declaration.

This matter is being referred to Technology Center 3664 for consideration on the merits of the reply and the 37 CFR § 1.131 declaration, filed July 28, 2008.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions